Claim No: SCCH - 478070

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Trider's Door & Glass Repairs v. Cole Harbour Glass Limited*, 2018 NSSM 57

BETWEEN:

TRIDER'S DOOR & GLASS REPAIRS

Claimant

- and -

COLE HARBOUR GLASS LIMITED and CYRIL CHAPMAN

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on August 21, 2018

Decision rendered on August 27, 2018

APPEARANCES

For the Claimant	Michael Trider Proprietor
For the Defendants	Cyril Chapman

BY THE COURT:

[1] The Claimant Trider's Door & Glass Repairs and the Defendant Cole Harbour Glass Limited are both in the glass business. They supply and install glass and related products to buildings large and small. In the case at hand, this concerns a 10-storey apartment building on Larry Uteck Drive in Halifax.

[2] The Claimant is a proprietorship of Michael Trider. The named Defendant Cyril Chapman is the owner of Cole Harbour Glass Limited. In my opinion he was named personally as a Defendant for no good legal reason, as all contractual dealings were between the companies. The claim against Mr. Chapman will be dismissed, and all future references to the Defendant are to the corporate Defendant.

[3] The Defendant had a contract to supply and install windows and related structures on the subject building. Because it did not have sufficient employees at its disposal to undertake the job, it entered into a verbal agreement whereby the Claimant would supply labour to the project at a rate of $40.00 per hour. While it is not strictly relevant to the ultimate questions, there had been talk between the principals of the parties about subcontracting a larger part of the contract to the Claimant. In the end, the agreement was for labour only. There is nothing in the evidence to suggest that Mr. Trider himself was expected to be a constant presence at the project, although it was anticipated that he would have some degree of control over what went on involving his employees.

[4] There were some problems which led to a disagreement about charge backs. In other words, the Defendant seeks to hold the Claimant responsible for

some damage done to materials, as well as for defective work or work it says was done unnecessarily.

[5] The claim, as filed, is for $7,494.98, which is the last remaining amount of the Claimant's much larger bills, which remaining amount the Defendant has refused to pay. The Defendant has counterclaimed for this amount, as well as for a further $2,039.44. If the Defendant is correct, it would not owe the amount claimed by the Claimant and would be entitled to recovery back from the Claimant of $2,039.44.

[6] There is no dispute that the Claimant supplied the labour that it did, and as such the Claimant is *prima facie* entitled to its claim, subject to whether or not the Defendant is entitled to recover amounts on its counterclaim.

[7] It is axiomatic in court proceedings, that a party that makes an assertion has the onus to prove it. Proving a claim, or in this case a counterclaim, requires the party to present its evidence in such a way that the adjudicator can make sense of it, and the evidence must be more compelling than the evidence that answers it. I will observe that, while I do not question the sincerity of the Defendant or Mr. Chapman, they did not do a good job of presenting the evidence in a way that I could understand what they were claiming, and which would help their cause. Under the circumstances, I must do the best I can and make such findings of fact as appear to me to be proper.

[8] There are several issues that give rise to the counterclaims.

[9] The largest issue from a monetary standpoint is a claim by the Defendant that the Claimant failed to adequately secure a door on the 10th floor of the unit, with the result that during a severe storm in December 2017, the door literally blew out of its frame and was damaged beyond repair. In a document which the Defendant used to document its counterclaims, it seeks recovery of $2,042.25 as the cost of the door, and an additional $392.69 for glass, as well as it seeks six hours of its own labour at $65.00 an hour for the cost of installing said door. All in all, the claimed costs for this 10th floor door total $2,824.94.

[10] I have some difficulty with this claim. Mr. Trider testified that the door was secured reasonably well, awaiting completion of other work, and that the storm in question was an Act of God. As he described it, another structure, namely a Styrofoam wall, blew out initially creating a wind tunnel effect that magnified the winds against this door.

[11] Mr. Chapman pointed out that Mr. Trider ought to have been aware of an impending storm, as he was in the habit of checking weather reports. He says that it was careless on the part of Mr. Trider not to have put additional supports in, knowing that a severe storm was on the way.

[12] I am going to accept that there was an element of carelessness on the part of the Claimant, and that an amount ought to be charged to account for this mishap. However, I believe the amounts claimed by the Defendant are inflated. In anticipation of the hearing, the Claimant itself sought a quotation for an identical door from the same company that supplied the door to the Defendant, and the quotation for it was for $1,232.00. Mr. Chapman, after being made aware of this quote, confessed that his charge included a markup.

[13] In other words, the Defendant not only seeks to hold the Claimant liable for the cost of the damaged item, but seeks to make a profit from it.

[14] That is not how the law works. Damages are calculated at the party's actual cost, not at some retail amount that it would charge a customer. In the end, I am left in considerable doubt as to the actual cost to the Defendant of the door and of the glass, and I'm prepared to estimate the total cost at $1,400.00.

[15] There is a similar problem with the labour cost. The Defendant seeks to charge the Claimant $65.00 an hour for its labour, when it was paying the Claimant $40.00 an hour for skilled labour. Again, I believe the Defendant is seeking to make a profit in its damage claim, which is impermissible. I am in some doubt as to the amount of labour required, and of the cost that it actually incurred for its own forces to install that door, and I reduce the labour amount to $150.00.

[16] Another item in the counterclaim concerned a window unit destined for the ninth floor which was damaged when one of the Claimant's employees dropped it. The amount claimed is $797.43. The Defendant did not file an invoice indicating that this was its actual cost for the door, and I am concerned that it is again seeking to profit by marking up its cost. I do accept that there is liability on the part of the Claimant, and I will allow $500.00.

[17] The Defendant seeks to claim back 58 hours of time spent by the Claimant's workers, and charged in its invoicing, for various alleged issues. The largest part consists of 32 hours that the Defendant claims the Claimant wasted

working on the corners of the buildings. There was a great deal of evidence about this job in the corners, which was very technical and difficult for me to understand. What appears indisputable is that it was not a part of the job that the Claimant was initially going to do. The Defendant's own forces made one attempt to install these aluminum structures that form the corners of the buildings, and because they did not line up properly, it had to be redone. Apparently the Claimant was asked to make an attempt to do it, which it did, but not without some problems. Mr. Trider described how the underlying surface was not even and the pieces could not be made to line up. Also, he complained that he had been promised the use of power lifts, otherwise known as zoom booms, and that these were often not available making it much more difficult to put on these pieces. In the end, they did not line up again and they had to be removed and ultimately were redone by a completely different method.

[18] Under the circumstances, I do not believe that the Claimant can be faulted. I believe that the Claimant made a good faith effort to help the Defendant, but that there was no inherent warrantee that it would work. I believe that this claim should be disallowed.

[19] The Defendant also seeks to claw back eight hours of time for the work to install the ninth floor sealed unit that was damaged. The fallacy here is that the Claimant never installed the unit as it was damaged before installation, and I find that this claim is misconceived.

[20] The Defendant also seeks to claw back 18 hours of time that it says that the Claimant's labourers spent cleaning material that they had mishandled, and which ought not to have required cleaning. I also believe this is misconceived.

Mr. Trider described how there were materials kept on site, and there were often long periods of time of up to six weeks where no work could be done and the Claimant had no control over how these materials were stored or handled. When his men came onto the site and had to find materials to be used, they would naturally make sure that the materials were clean before installing them. The long and the short of it is that I do not believe that the Defendant has succeeded in convincing me that it has been overcharged and I disallow any of these claimed hours.

[21] The last item of the counterclaim deals with allegations of a leaking door or window unit (I am not sure which) on the 10th floor. The Defendant claims that it paid a company known as Halifax Caulking either $2,055.58, which is contained in an invoice, or $2,039.44, which is the amount set out in the counterclaim.

[22] The critical piece of evidence that is missing is an actual invoice from Halifax Caulking. The invoice that it did produce is on its own letterhead and is basically fashioned as a invoice from Cole Harbour glass to Trider Glass. In that invoice it claims three hours at $65.00 an hour to determine the leak, as well as $1,592.46 for "contract labour."

[23] On the question of the quantum of this claim, I am left in considerable doubt as to the actual cost incurred. There ought to have been an actual invoice from Halifax Caulking to support the claim. Having seen the Defendant adding markup to other chargebacks, I am left in serious doubt that this is the actual cost incurred.

[24] More fundamentally, I have difficulty attaching liability to the Claimant. The Defendant filed some photographs in evidence, which it purports to show the area of leaking, but I find these photographs to be confusing and of virtually no value as proof. Apparently, there had been some water visible back in February 2018 shortly after the unit was installed, but which Mr. Trider attributed to condensation. It was not until many months later, long after the Claimant had completed its work that the leak was said to have been discovered and repaired. Again, the evidence is insufficient to satisfy me that the Claimant installed the unit negligently. The company that repaired the leak was not present to offer its opinion on what had been done wrong, and the evidence is otherwise inconclusive, in my opinion.

[25] In the result, I allow charge backs totalling $2,050.00, and the Claimant shall accordingly have judgment for the amount of its claim, minus these charge backs, which reduces the Claimant's recovery to $5,444.98.

[26] The Claimant is also entitled to its costs in the amount of $199.35 for issuing the claim plus $138 for a process server.

[27] The counterclaim is otherwise dismissed.

Eric K. Slone, Adjudicator